

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Z-TEL COMMUNICATIONS, INC.	}	
	}	
Complainant	}	
	}	
vs.	}	Docket No. 02-0160
	}	
ILLINOIS BELL TELEPHONE COMPANY, d/b/a AMERITECH ILLINOIS	}	
	}	
Respondent	}	

ILLINOIS BELL TELEPHONE COMPANY'S RESPONSE
TO Z-TEL COMMUNICATIONS, INC. MOTION TO COMPEL

Illinois Bell Telephone Company (Ameritech Illinois) files this response to Z-Tel Communications, Inc.'s ("Z-Tel's") Motion to Compel compliance with discovery requests. Z-Tel filed and served its motion to compel electronically at approximately 5:00 p.m. on Friday, March 22, 2002. For the reasons stated herein, Z-Tel's motion should be denied.

Z-Tel's Motion is Untimely.

1. Z-Tel's motion is untimely. Z-Tel filed its motion at the last minute of the last business day before the commencement of the hearing in this proceeding. The motion relates to discovery requests served on February 22, 2002, and responded to on March 7, 8 and 11. On March 11, 2002, Z-Tel delivered a letter to Ameritech Illinois complaining generally that Ameritech Illinois' discovery was incomplete and threatening to file a motion to compel if further discovery was not provided. (Exhibit C to Z-Tel's motion). This letter

apparently was written without regard to, and did not consider, the supplemental production made by Ameritech Illinois on March 11. That supplemental production included a detailed response to interrogatory no. 5 explaining the process by which Ameritech Illinois' retail operations received line loss information.¹

2. Ameritech Illinois responded to Z-Tel's letter on March 13, 2002 (Exhibit D to Z-Tel's motion). Ameritech Illinois stated its position that it had produced documents responsive to the Z-Tel's requests. With respect to both how Ameritech Illinois provided line loss information to Z-Tel and how Ameritech Illinois' retail operations received line loss information, Ameritech Illinois specifically volunteered that "if there is specific, additional relevant information regarding these processes that you need, please identify it for us, and we will attempt to provide it." With respect to the identification of Z-Tel customers to whom Ameritech Illinois' retail operations had sent Winback materials, Ameritech Illinois repeated that Ameritech Illinois had no way to identify the specific Z-Tel customers to whom line loss notifications were sent because Ameritech Illinois' retail operations do not know the identity of the carrier that is serving the customer.

3. Ameritech Illinois received no response to its letter and no follow-up request for information prior to the filing of Z-Tel's motion on March 22, 2002. In addition, during this period, Ameritech Illinois' principal witness, Glen Sirles, conducted a two-day workshop in Hoffman Estates, attended by several Z-Tel

¹ The letter complained that some of the documents produced had been improperly redacted. Ameritech Illinois provided unredacted copies of these documents on March 13.

representatives, in which he provided detailed information on the 836 line loss process as well as the process used by retail to obtain line loss information. Mr. Sirles and his team responded to the questions posed by the CLECs in attendance, including Z-Tel, regarding these processes. Z-Tel's motion does not explain why it waited from March 13 until March 22 before filing its motion, nor does it identify what specific information about these processes that it does not have. Under these circumstances, a motion filed on the eve of the hearing is untimely and should be denied.

Z-Tel's motion should be denied on substantive grounds.

4. Despite the fact that Ameritech Illinois has twice stated (in its discovery responses and in its March 13 letter) that it does not know the identity of the Z-Tel customers to whom Winback marketing materials were sent, Z-Tel requests that Ameritech Illinois be required to provide this information. (Motion, par. 6). Z-Tel alleges that because "Mr. Sirles indicates that in fact Ameritech does have 836 Line Loss Notices that are made available to Ameritech's retail business units that "does contain a field that could have identified the winning carrier for the loss'," Ameritech Illinois should be required to provide the information. First, Mr. Sirles stated that the 836 line loss notices were not provided to Ameritech Illinois' retail units, not that they were. Second, Mr. Sirles explained that "as originally designed [the 836 line loss notice] contained a field that could have identified the winning carrier for the line." (Ameritech Illinois Ex. 1.0, p. 5, line 112). As Mr. Sirles further stated, however, "The concern that the 836 message might disclose the identity of the winning CLEC has been resolved

by eliminating or blocking out the carrier identification field in both current and future versions of line loss notifications.” (Ameritech Illinois Ex. 1.0, p. 7, line 189). Mr. Sirles never stated that Ameritech Illinois still possesses any 836 notices for Ameritech Illinois retail that contained the identity of the winning carrier. Ameritech Illinois cannot be compelled to produce information that it does not have.

5. With respect to documentation regarding the line loss process for providing information to Ameritech Illinois’ retail units, Z-Tel’s motion fails to acknowledge the detailed response to Z-Tel’s interrogatory no. 5 or the extensive discussion of this issue in the March 13-14 workshop. Z-Tel’s motion says that “It did not appear to Z-Tel that Ameritech’s responses were unresponsive until after Mr. Sirles’ testimony was served.” (Motion, par. 7). This cannot be true, however, because Z-Tel specifically addressed this issue in its March 11 letter and Ameritech Illinois specifically responded in its March 13 letter. (Exhibits C & D to Z-Tel’s motion). Ameritech Illinois’ letter specifically referenced the response to interrogatory no. 5 (which Z-Tel apparently had not reviewed at the time its March 11 letter was written), and volunteered to provide any “specific, additional relevant information regarding these processes” that Z-Tel might require. Z-Tel never responded to this offer. Z-Tel’s motion to compel is without merit.

6. Ameritech Illinois addresses the subjects raised in Z-Tel’s discovery requests in the pre-served written testimony of Mr. Sirles. Mr. Sirles will be available to answer questions on the line loss processes at the hearing starting on Monday morning. Ameritech Illinois also has agreed to produce four

additional witnesses for adverse examination by Z-Tel regarding these processes, including one witness specifically related to the technical processes employed to provide line loss notification to Ameritech Illinois' retail business units. It is common practice in Commission proceedings involving complex processes and systems that if there are specific questions that a particular witness cannot answer, the proponent of the question may make an oral data request so that the answer to the specific question can be researched and provided. Ameritech Illinois has no objection to this procedure if it becomes appropriate in this proceeding. However, Ameritech Illinois does object to Z-Tel's untimely and substantively erroneous motion to compel further discovery responses after the hearing in the proceeding has already begun. Furthermore, Z-Tel's motion does not even address Ameritech Illinois' objection to the Z-Tel's discovery requests on the ground that they were overbroad and burdensome, making it difficult to know exactly what information was sought and forcing Ameritech Illinois to guess, at its peril, how far the scope of the requests extended. A copy of these objections is attached and incorporated by reference.

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WHEREFORE, for all the reasons stated, Ameritech Illinois respectfully requests that Z-Tel's Motion to Compel be denied.

Respectfully submitted,

Illinois Bell Telephone Company
(Ameritech Illinois)

By: _____
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Certificate of Service

The undersigned, an attorney, certifies that the foregoing Response to Z-Tel Communications, Inc. Motion to Compel was filed with Donna Caton, Chief Clerk of the Illinois Commerce Commission, by E-Docket and copies were served on each person on the attached Service List by electronic mail or hand delivery on March 25, 2002.

Service List Docket 02-0160

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